



California Fair Political Practices Commission

May 18, 1989

Laura C. Marino
Deputy City Attorney
1501 Truxtun Avenue
Bakersfield, CA 93301

Re: Your Request for Informal Assistance
Our File No. I-89-291

Dear Ms. Marino:

This is in response to your request for advice regarding the responsibilities of City of Bakersfield officials under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ You have requested general advice. Therefore, we consider your letter to be a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed.)²

QUESTION

Does the Act disqualify public officials who own real property or have other financial interests within the jurisdiction of the city from participating in the adoption of a general plan?

CONCLUSION

The Act disqualifies public officials who own real property or who have other financial interests within the jurisdiction of the city from participating in governmental decisions which will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on their economic interests.

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

FACTS

The City of Bakersfield is beginning the process of adoption of a new general plan for the Bakersfield metropolitan area. A public hearing before the planning commission and the planning advisory committee is scheduled to begin on May 18, 1989. The land use element of the plan will be considered first. The hearings on this element will be conducted all at one time. The planning commission and the planning advisory committee will approve or disapprove the entire land use element as a whole.

All members of the planning commission and of the planning advisory committee, as well as all members of the staff involved in the project own property in the City of Bakersfield or in adjacent county areas included in the draft plan. Some members of the planning commission and the planning advisory commission are employed by businesses located in the general plan area.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or using his or her official position to influence a governmental decision in which the official knows or has reason to know he or she has a financial interest. All members of the planning commission, the planning advisory committee, and employees of the city are public officials. (Section 82048.)

A public official or designated employee participates in the making of a governmental decision when, acting within the authority of his or her position, he or she:

(1) Negotiates, without significant substantive review, with a governmental entity or private person regarding the decision; or

(2) Advises or makes recommendations to the decision maker, either directly or without significant intervening substantive review by:

(B) Preparing or presenting any report, analysis or opinion, orally or in writing, which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision.

Regulation 18700(c), copy enclosed.

Members of the planning commission and of the planning advisory commission, as well as designated employees who may have participated in the preparation of the general plan make recommendations to the city council for adoption of the plan. An official who has a financial interest in any of the recommendations may not participate in the decision.

You have stressed in your letter that the entire land use element of the general plan will be approved or disapproved as a whole. However, during the hearings, the public officials will make incremental decisions regarding specific parcels of land or areas of the city. Although the final vote will be to adopt or reject the general plan as a whole, subissues involving the land use designation of particular parcels or areas of the city will undoubtedly be given consideration independently. Each one of these steps leading to the adoption or rejection of the general plan constitutes a governmental decision which may require disqualification.

For example, if a citizen appears before the planning commission to discuss the particular categorization of a parcel of land, consideration of that item consists of a governmental decision requiring the disqualification of any official who may have a financial interest in the decision. A disqualified official must disclose his or her financial interest on the record. (Regulation 18700(b)(5).)

An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received

by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103(a)-(e).

The Commission has interpreted the above prohibitions through a set of regulations and advice letters. The process of disqualification is best approached through an analysis of each component of the prohibition. First you must determine whether the effect of the decision on the official's economic interest is reasonably foreseeable, then you must determine whether the effect on the official's economic interest will be material and finally you must determine whether the effect of the decision on the official's economic interest will be distinguishable from the effect on the public generally. Each determination must be made on a case-by-case basis for each independent decision made in the process of modifying and developing the general plan. For example, if during the hearings a member of the public brings to the attention of the public officials a particular parcel of land, a public official who meets the test set forth for disqualification may not participate in the discussion, attempt to influence the decision, or vote on the particular decision. This same official, however, may be able to participate in decisions affecting other parcels or areas of the city.

We are enclosing copies of the Casey Advice Letter, No. I-86-310, and of all materials referenced therein which will serve as a road map as you attempt to determine whether disqualification is required at each step. Also enclosed are copies of Regulations 18702.1, 18702.3 and 18702.4 which directly apply to interests in real property.


Because adoption of a general plan will involve numerous subissues and multiple decisions, we are unable to advise specifically when disqualification will be required at each step. However, once all decisions related to the general plan have been finalized, the final vote to adopt or reject the plan will not require disqualification if no modifications are made at that time. This is so because the plan, as implemented through each

separate decision, will affect the public officials involved in a manner which is not distinguishable from the effect on the public generally.³

I trust I have provided you with sufficient guidelines to determine when disqualification is required. Should you have any further questions as each independent decision is before the public officials, do not hesitate to call me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel


By: Blanca M. Breeze
Counsel, Legal Division

KED:BMB:plh

Enclosures

³ For purposes of our discussion, the public generally constitutes the entire population of the City of Bakersfield.

OFFICE of THE CITY ATTORNEY

ARTHUR J. SAALFIELD

CITY ATTORNEY

1501 TRUXTUN AVENUE

BAKERSFIELD, CALIFORNIA 93301

(805) 326-3721

MUNICIPAL LAW:

ALAN DALE DANIEL

Assistant City Attorney

LOUISE T. CLOSS

Assistant City Attorney

LAURA C. MARINO

Deputy City Attorney

ADMINISTRATION:

SHARI D. FOSTER

Administrative Aide

LITIGATION:

DON MCGILLIVRAY

Assistant City Attorney

ROBERT M. SHERFY

Assistant City Attorney

MEDELYIAN R. GRADY

Assistant City Attorney

WILLIAM H. SLOCUMB

Deputy City Attorney

INVESTIGATIONS:

ROGER BUCKLES

City Attorney Investigator

May 12, 1989

Kathryn E. Donovan
General Counsel
Fair Political Practices Commission
428 J Street, Suite 800
P.O. Box 807
Sacramento, CA 95804-0807

Dear Ms. Donovan:

The City of Bakersfield is beginning the process of adopting a new General Plan for the Bakersfield Metropolitan Area. Our public hearing process before the Planning Commission and the Planning Advisory Committee (PAC), appointed by the Kern County Board of Supervisors, is to begin on Thursday, May 18, 1989. The first segment to be considered and approved is the Land Use Element of the plan. This element contains the land use designations for all of the property in the City of Bakersfield and its sphere of influence (approximately 450 square miles). The hearings on this element will be conducted all at one time, and the vote of the Commission and PAC will either approve or disapprove the entire land use element as a whole.

All members of the Planning Commission and PAC, as well as all involved members of staff, own property in the City or the adjacent County areas included in the draft plan (and therefore within the boundaries of the land use element to be considered). Moreover, many are employed by businesses located in the General Plan area. Based on Section 18702.3 of the Regulations of the F.P.P.C., I had some questions as to whether any Commissioner or PAC member could participate in recommendations to the City Council and Board of Supervisors.

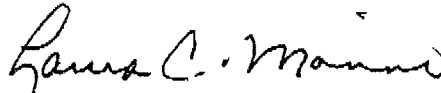
On May 11, 1989, I spoke to Blanca Breeze, an FPPC staff attorney. I was advised that all Commissioners could vote on the entire land use element of the plan; during the course of the public hearings; however, if a member of the public testifies concerning a piece of property located within 300 feet of a Commissioner's property or the business which employs the Commissioners, then that Commissioner may not participate in the discussion (although he or she need not declare a conflict). She advised that this is all that would need to be done even though at the close of the hearings, the Commissioners will all vote on

Letter to Ms. Donovan
May 12, 1989
Page 2

the land designation covering the City, including their own property. We understand that the regulations will not limit ability of Commissioners to vote on general land use policies set forth in the Plan to be adopted, e.g. preservation of agricultural land and uses permitted within the various land use designations, etc. (She and I did not discuss participation by PAC members.)

This is the advice we intend to follow on Thursday, May 18, 1989, unless we hear something to the contrary from the F.P.P.C. staff. Thank you for your early attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Laura C. Marino".

Laura C. Marino
Deputy City Attorney

LCM:lg

cc: Bruce Divelbiss, Deputy County Counsel

L.FPPC1-2

MAY 12 '89 14:26 CITY OF BAKERSFIELD 805 323-3780

P.2/3

OFFICE of THE CITY ATTORNEY

ARTHUR J. SAALFIELD
CITY ATTORNEY
1501 TRUXTON AVENUE
BAKERSFIELD, CALIFORNIA 93301
(805) 326-3721

MUNICIPAL LAW:
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428 J Street, Suite 800
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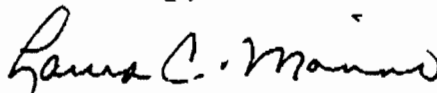
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Letter to Ms. Donovan
May 12, 1989
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Sincerely,

A handwritten signature in cursive script, reading "Laura C. Marino".

Laura C. Marino
Deputy City Attorney

LCM:lg

cc: Bruce Divelbiss, Deputy County Counsel

L.FPPC1-2

CITY OF BAKERSFIELD

CALIFORNIA
CITY

FAX NUMBER NO 805 323-3780

CITY OF BAKERSFIELD

1501 TROXEL AVENUE

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BAKERSFIELD, CALIFORNIA 93301

WHITE-USER
YELLOW-CLERK'S FAX FILE

1501 TROXEL AVENUE

CITY OF BAKERSFIELDCALIFORNIA
CITY HALL

FAX PHONE NO. 805/323-3780

TELECOPIER MESSAGE

Please Route as soon as possible to:

Name: KATHRYN E. DONOVAN, GEN. COUNSELCompany/Organization FAIR Political Practices CommissionSACRAMENTO, CA 95804

From:

LAURA C. MARINO, Deputy City AttyBAKERSFIELD, CA 93301User's Office Phone Number: (805) 326-3721Number of Pages: 3
(Including Cover)Special Instructions PLEASE Confirm Receipt
- CALL -

1501 TRUXTON AVENUE

• BAKERSFIELD, CALIFORNIA 93301



California Fair Political Practices Commission

May 17, 1989

Laura C. Marino
Deputy City Attorney
1501 Truxtun Avenue
Bakersfield, CA 93301

Re: Letter No. 89-291

Dear Ms. Marino:

Your letter requesting advice under the Political Reform Act was received on May 12, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Blanca Breeze an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Kathryn E. Donovan
General Counsel

KED:plh

3 2 5 11 10 03

July 19, 1988

Richard K. Boomer
1661 Petaluma Court
Hollister, CA 95023
(408) 637-2765 (home)
(408) 637-5323 (work)

Diane Griffiths
General Counsel
Fair Political Practice Board
P. O. Box 807
Sacramento, CA 95804-0807

Dear Ms. Griffiths:

Earlier today I had the opportunity to speak with Marguerette, the Day Attorney in your organization, regarding a problem I may be facing in the upcoming November election.

I intend on running for the Hollister City Council. The Hollister City Attorney, John H. O'Brien, has stated that, because I am employed with the San Benito County Sheriff's Department, I may have a conflict of interest.

He feels, I will not be able to vote on City Police issues or issues that arise between the City and County Governments. He also stated that if elected, I may have to choose between my job and the council seat.

I was told by the Day Attorney that she felt there was no conflict but suggested I request your opinion in writing. (Enclosed you will find a copy of my job description.)

I have until August 12th to file my papers if I intend on running. I know this is short notice and I apologize but I do not wish to put my family or supporters, through the rigors of an election, if the City Attorney is going to say I cannot serve.

Please advise me at the soonest possible date if there is in fact a conflict of any sort. I wish to thank you in advance for your efforts on my behalf.

Respectfully,

A handwritten signature in cursive script, appearing to read "Richard K. Boomer".

RICHARD K. BOOMER

Enclosure

SHERIFF'S LIEUTENANT
(Corrections)

Definition:

Will be the Jail Administrator, answering only to the Sheriff. He/She will be responsible for the operation of the San Benito County Jail Facility on a day-to-day basis. In the absence of the patrol Lieutenant, will be responsible for all Sergeants and Deputies and their day-to-day function. In the absence of the Sheriff, may be assigned to be responsible for the operation of the whole Sheriff's Department.

Example of Duties:

He/She shall be responsible for coordinating the functions of the San Benito County Jail Facility in general. Shall be responsible for planning and development on all phases to insure maximum efficiency of the jail's activities. Establish the Jail Division's goals and objectives and implement programs on a continuing basis to achieve these goals. Be responsible for inter-agency coordination and develop good relations within local government, Federal and State agencies. Be responsible for the scheduling, training and personnel records of all employees assigned to the Jail Division. Be responsible for the budget and all internal investigations for the Jail Division. Will be responsible for the Civil Division, warrants and maintenance of the training facility. He/She shall enforce all the rules and regulations pertaining to the Sheriff's Department. Will maintain complete inventory of equipment for the Jail Facility.

Desireable Qualifications:

Possession of a valid California operator's license. Possession of an "Advanced Certificate" issued by the State Commission of Peace Officers Standards and Training.

Education/Experience:

Equivalent to completion of the twelfth grade. Completed Supervisory School, and will complete Middle Management course with 12 months of promotion to Lt. Must have 10 years of Law Enforcement experience
Must be a Sgt. at the time of promotion to Lt.

Knowledge and Ability:

General knowledge of the principals, techniques and methods of middle management. General knowledge of criminal law including the laws of arrest, search and seizure, rules of evidence, and laws governing jail procedure. General knowledge

San Benito County
Sheriff's Lieutenant - (Corrections)
July 22, 1985
Page Two

Knowledge and Ability: (Cont'd)

of the principals, methods, and techniques of Law Enforcement work. General knowledge of all the functions performed by the San Benito County Sheriff's Department. The ability to promote and develop innovative programs for the purpose of increased efficiency of the objectives and goals of the Department. Ability to interpret and explain complex problems to subordinates. Ability to establish and maintain effective working relationships with fellow employees, government officials, and the general public. Ability to make decisions involving the Sheriff's Department on an on-going everyday operation of the Department.



California Fair Political Practices Commission

July 25, 1988

Richard K. Boomer
1661 Petaluma Court
Hollister, CA 95023

Re: 88-291

Dear Mr. Boomer:

Your letter requesting advice under the Political Reform Act was received on July 22, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margarita Altamirano, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths
General Counsel

DMG:plh